

## 1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: HERITAGE LAND COMPANY, ) E-Filed: 04/15/09  
5 LLC, )  
6 Debtor. ) Case No.  
7 ) BK-S-09-14778-LBR  
8 ) Chapter 11

9 TRANSCRIPT OF PROCEEDINGS  
10 OF

11 MOTION FOR JOINT ADMINISTRATION  
12 WITH LEAD CASE HERITAGE LAND COMPANY, LLC,  
13 OF RELATED CHAPTER 11 CASES  
14 AND SETTING SINGLE BAR DATE AND MEETING OF CREDITORS  
15 AND PROPOSED ORDER, NO. 94

16 AND

17 APPLICATION PURSUANT TO BANKRUPTCY CODE  
18 SECTIONS 105(A), 363, AND 507(A)  
19 FOR AN ORDER AUTHORIZING THE DEBTORS TO,  
20 (1), PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS,  
21 AND OTHER COMPENSATION;  
22 (2), REMIT WITHHOLDING OBLIGATIONS;  
23 (3), MAINTAIN EMPLOYEE COMPENSATION AND BENEFIT PROGRAMS  
24 AND PAY RELATED ADMINISTRATIVE OBLIGATIONS;  
25 AND, (4), HAVE APPLICABLE BANKS AND OTHER FINANCIAL  
INSTITUTIONS RECEIVE, PROCESS, HONOR, AND PAY CERTAIN CHECKS  
PRESENTED FOR PAYMENT AND HONOR CERTAIN FUND TRANSFER BENEFITS;  
AND MEMORANDUM OF POINTS AND AUTHORITIES, NO. 95

AND

MOTION TO EXTEND TIME  
TO FILE SCHEDULES OF ASSETS AND LIABILITIES  
AND STATEMENT OF FINANCIAL AFFAIRS, NO. 96

AND

APPLICATION FOR ENTRY OF ORDER,  
(1), AUTHORIZING THE DEBTORS TO SELL HOMES FREE AND CLEAR  
OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS;  
(2), ESTABLISHING PROCEDURES FOR THE RESOLUTION AND PAYMENT  
OF LIENS AND CLAIMS,  
AND, (3), AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR  
ALL OBLIGATIONS RELATED THERETO, NO. 100  
AND

1 MOTION TO USE CASH COLLATERAL  
2 FOR INTERIM AND FINAL ORDERS  
3 PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364  
4 OF DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS  
5 PURSUANT TO 105, 361, 362, 363, AND 364  
6 OF THE BANKRUPTCY CODE,  
7 (A), AUTHORIZING DEBTORS TO USE CASH COLLATERAL;  
8 (B), GRANTING ADEQUATE PROTECTION TO THE DEBTOR'S  
9 PREPETITION SECURED PARTIES;  
10 AND, (C), SCHEDULING A FINAL HEARING;  
11 MEMORANDUM OF POINTS AND AUTHORITIES, NO. 101  
12 AND  
13 APPLICATION FOR AN ENTRY OF AN ORDER  
14 PURSUANT TO SECTIONS 105(A), 363(C), 1107(A), AND 1108  
15 OF THE BANKRUPTCY CODE  
16 AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS  
17 TO CUSTOMERS  
18 AND TO OTHERWISE CONTINUE CUSTOMER PRACTICES AND PROGRAMS  
19 IN THE ORDINARY COURSE OF BUSINESS, NO. 99  
20 AND  
21 APPLICATION FOR ORDER  
22 UNDER 11, USC, 105, 363, 503(B), 1107, 1108 AUTHORIZING,  
23 (1), MAINTENANCE OF CERTAIN EXISTING BANK ACCOUNTS;  
24 (2), CONTINUED USE OF EXISTING BUSINESS FORMS;  
25 (3), CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM;  
(4), PROVIDING ADMINISTRATIVE PRIORITY STATUS  
TO POSTPETITION INTERCOMPANY CLAIMS,  
AND, (5), WAIVER OF SECTION 345(B) DEPOSIT  
AND INVESTMENT REQUIREMENTS;  
MEMORANDUM OR POINTS AND AUTHORITIES, NO. 99  
VOLUME 1  
BEFORE THE HONORABLE LINDA B. RIEGLE  
UNITED STATES BANKRUPTCY JUDGE

Wednesday, April 8, 2009

3:00 p.m.

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

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1 APPEARANCES (Cont.):

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1 (Court convened at 03:04:20 p.m.)

2 THE CLERK: Bankruptcy court is now in session.

3 (Colloquy not on the record.)

4 THE COURT: Be seated. Heritage Land Company.  
5 Appearances in the courtroom first, please.

6 MR. LARSON: Good afternoon, your Honor. Zach Larson  
7 on behalf of Heritage Land Company, local counsel.

8 MS. AXELROD: Good afternoon, your Honor.  
9 Brett Axelrod for James Rhodes and Sagebrush Enterprises.

10 MR. THOMAS: Your Honor, Tim Thomas on behalf of the  
11 Steering Committee for the First Secured Lienholders.

12 MR. LANDIS: Good afternoon, Judge. Augie Landis,  
13 Assistant United States Trustee.

14 THE COURT: Okay. And on the telephone.

15 MR. STANG: Good afternoon, your Honor. James Stang,  
16 S-t-a-n-g, appearing for the debtors.

17 MR. KORNFELD: Good afternoon, your Honor.  
18 Alan Kornfeld also for the debtors.

19 MR. DUBLIN: Good afternoon, your Honor. Phil Dublin  
20 and Abid Qureshi from Akin, Gump for the First Lien  
21 Steering Committee.

22 MR. NAGUIAT: Good afternoon, your Honor.  
23 Ramon Naguiat of Skadden, Arps on behalf of Credit Suisse as  
24 the agent under the first-lien credit agreement.

25 THE COURT: Okay. All right. So I --

1 MR. DeAMICIS: Good afternoon, your Honor.

2 Don DeAmicis --

3 THE COURT: Sorry.

4 MR. DeAMICIS: -- of Ropes & Gray.

5 THE COURT: Sorry. I couldn't hear you.

6 MR. DeAMICIS: Don DeAmicis of Ropes & Gray  
7 representing the agent on the second lien (indiscernible)  
8 Wells Fargo.

9 THE COURT: Okay. Did you catch that name?

10 THE CLERK: (Indiscernible).

11 THE COURT RECORDER: Yes, your Honor.

12 THE COURT: Okay. Thank you.

13 MR. DeAMICIS: Thank you.

14 THE COURT: All right. So why don't you -- I mean, I  
15 have a proposed order.

16 Is there any other appearances? Did I cut anyone off?

17 MS. CHO: Your Honor, Shirley Cho from the Pachulski  
18 firm. I'm also on the phone for debtors.

19 THE COURT: Okay. All right. I have a proposed  
20 order in front of me, but why don't someone go through this and  
21 explain where we are and what your intention is vis-a-vis the  
22 coming hearings.

23 MR. STANG: Thank you, your Honor. This is  
24 Mr. Stang. If I could take a shot at this? Your Honor, you  
25 have in front of you a stipulated interim cash-collateral order

1 that would allow use of cash collateral pursuant to a budget  
2 that was given to you yesterday and updated as to one line item  
3 which we'll talk about as we get through the order, and it  
4 allows for use of cash collateral through April 17th.

5 The parties understand that there are other -- obviously,  
6 as we discussed yesterday, there are other matters pending  
7 coming up on the 17th.

8 And the parties will during the next ten days be engaged  
9 in an exchange of information and due diligence by the first  
10 lienholders and the agent and, perhaps, can reach an agreement  
11 on further use of cash collateral if the Court's calendar is  
12 otherwise taken up with the trustee matters.

13 The cash-collateral order has what some people might call  
14 standard provisions of adequate protection to the lenders. It  
15 does provide for concessions by the debtor in connection with  
16 the validation of the first lienholders' and agents' positions,  
17 but with reservation of rights for a creditors committee to be  
18 appointed we hope in the near future.

19 There is also a provision --

20 THE COURT: Let --

21 MR. STANG: -- for a budget--

22 THE COURT: Let me interrupt you --

23 MR. STANG: Yes, ma'am.

24 THE COURT: -- as I go along, and maybe that's not --

25 MR. STANG: I --

1 THE COURT: -- the best way to do it, but it will  
2 help me remember as I go.

3 I don't know why -- and I'm asking the lien creditors to  
4 reply to this. I understand that you're opening it up to other  
5 entities to object, but this is cash collateral for ten days  
6 for heaven sakes. Why in the world does that provision have to  
7 be in there for a cash-collateral order for this first period?

8 MR. DUBLIN: Good afternoon, your Honor. This is  
9 Phil Dublin for the first-lien lenders. Your Honor, as part of  
10 the negotiation with the debtors on the interim use of cash  
11 collateral, this is one of the requests that the lenders made.

12 And we don't want to find ourselves in the position where  
13 we're permitting the debtors to use the lenders' cash  
14 collateral, and then the debtors themselves challenge the  
15 claims of the first-lien lenders.

16 It is opened up for again a committee, any type of  
17 committee to the extent appointed, or any third party pursuant  
18 to the terms of paragraph 10 of the proposed order.

19 THE COURT: But just 'til June 15th.

20 MR. DUBLIN: But 90 -- I'm sorry. Today is  
21 April 8th. It's in excess of a 60-day period for the  
22 committee. We can modify that to be 60 days from the  
23 appointment of a committee as opposed to a finite date,  
24 your Honor.

25 THE COURT: Well, I don't think these kinds of



1 language belong in interim orders. You know they're always  
2 problematic in final orders.

3 But I don't think they belong in interim orders especially  
4 since the secured creditor's not exactly giving up much, and  
5 you're getting all that money back for your attorneys fees, and  
6 you're going to cost this estate a lot of money, and, right,  
7 I'm not saying it's wrong.

8 But there's going to be a lot of cost and expense to this  
9 estate in all the discovery that's going to be going on in the  
10 two weeks.

11 So I am not inclined to allow those provisions as  
12 admissions for the first ten days because wouldn't these also  
13 be binding on the trustee?

14 MR. DUBLIN: Yes, your Honor.

15 THE COURT: Well, and you're moving for a trustee,  
16 right?

17 MR. DUBLIN: Yes.

18 THE COURT: Well, then you tell me why I should do  
19 that especially when the fact that nobody's been noticed of  
20 this.

21 MR. DUBLIN: I understand your concerns, your Honor.  
22 Would it be possible that if we take out those provisions that  
23 we at least have a stipulation that during this interim period  
24 the debtors would not challenge the claims?

25 THE COURT: That would be acceptable. So in other

1 words, I would accept as an interim provision that you assert  
2 they have a first lien they have not challenged as yet, and  
3 they will not challenge up to the cash-collateral date.

4 MR. DUBLIN: Okay. Thank you, your Honor.

5 THE COURT: All right. Go on, Mr. Stang.

6 MR. STANG: Thank you, your Honor. And we could do a  
7 page turn on this. I was just trying to give you the  
8 highlights if you will.

9 THE COURT: And I appreciate that.

10 MR. STANG: It --

11 THE COURT: And I --

12 MR. STANG: It --

13 THE COURT: I appreciate that.

14 Thank you.

15 MR. STANG: Okay.

16 THE COURT: So it was --

17 MR. STANG: So it --

18 THE COURT: -- just one --

19 MR. STANG: It talked --

20 THE COURT: It was one of the things --

21 MR. STANG: It --

22 THE COURT: -- I wanted covered.

23 MR. STANG: I'm sorry?

24 THE COURT: That was just one of the things I wanted  
25 to make sure I covered --

1 MR. STANG: Okay.

2 THE COURT: -- before I forgot, so --

3 MR. STANG: It ties to the budget. Your Honor, the  
4 budget has items on it that fall within the first three weeks,  
5 and, remember, there was this weekend date, and column 3 is  
6 April 17th.

7 There are items in the cash flow which show money going  
8 out. But by virtue of the rules on professional compensation,  
9 it would not go out.

10 So, for example, there is a line item for ordinary-course  
11 professionals. It was really left in there even with my  
12 knowledge to really kind of give people a sense of what we  
13 thought was happening operationally during the case.

14 But this approval of the cash-collateral order is not  
15 meant to supercede any of the other rules regarding any  
16 professional compensation.

17 You also made a comment yesterday, your Honor, about --  
18 and I'm just -- we'll get to the budget, specifically, but,  
19 once again, a high level.

20 You made a comment about, well, if the funds aren't used  
21 for warranty work does it go to some kind of slush fund. Under  
22 the company's cash management, if line items are not expended,  
23 they're not being created for reserves.

24 There's no separate account being created just because it  
25 says \$5,000, for example, for warranty repairs, and that money

1 leaves the concentration account to go to a separate account.

2 This is really if the money's not being actually spent,  
3 then it stays in the debtor's accounts in the concentration  
4 accounts. It doesn't get spun off to places underneath the  
5 carpet. I think it makes sense to go through the order --

6 THE COURT: Okay.

7 MR. STANG: -- and give you kind of what happens on  
8 each page.

9 THE COURT: Yes.

10 MR. STANG: The first page is a recital of the  
11 petition dates and the jurisdiction.

12 Page 2 which starts with paragraph 3 is where the debtor  
13 acknowledged, admitted, and confirmed, and I would  
14 interlineate.

15 I would not change the subparagraphs, but I would  
16 interlineate that for the period or for the cash-collateral  
17 period the debtors shall not commence any challenge. We'll  
18 pick up the terminology that's used later. I think we should  
19 still have these factual recitals --

20 THE COURT: I have no objection --

21 MR. STANG: -- so that --

22 THE COURT: -- if you recite.

23 MR. STANG: Two or three of them.

24 THE COURT: I --

25 MR. STANG: Okay.

1 THE COURT: But I think --

2 MR. STANG: So --

3 THE COURT: I just don't know if this is the right  
4 time pending assessment of what investigation you've done for  
5 you to admit as opposed to acknowledge that this is their  
6 contention.

7 MR. STANG: I think that the way it should be done is  
8 that the debtors acknowledge that the first-lien creditors and  
9 agent allege the following --

10 THE COURT: Yes.

11 MR. STANG: -- as of the petition date.

12 THE COURT: Yes.

13 MR. STANG: And that way, you know, we recognize what  
14 they're saying.

15 So what you've got in the subsections is a recital of the  
16 existence of the agreement, a recital of the amount of  
17 indebtednesses. That is at subpoint 2.

18 We turn to page 3. There is a recital regarding the scope  
19 of the liens that are provided to the first lienholders.

20 THE COURT: Now, you're going to --

21 MR. STANG: There is --

22 THE COURT: Excuse me. You're going to need --

23 MR. STANG: I'm sorry, ma'am.

24 THE COURT: -- to refer to paragraph letters --

25 MR. STANG: Okay.

1 THE COURT: -- because --

2 MR. STANG: Will do.

3 THE COURT: -- I have the version uploaded as an  
4 order, so my page numbers don't match yours.

5 MR. STANG: Okay. I apologize. At C-3 --

6 THE COURT: Okay.

7 MR. STANG: -- there is a recital regarding the scope  
8 of their liens. There --

9 THE COURT: Okay.

10 MR. STANG: There is a recital to Section 552 as  
11 extending to proceeds.

12 At C-4, there is a validation if you will, again, but  
13 we're going to make this into allegations.

14 THE COURT: Correct.

15 MR. STANG: So it will allege that they're valid and  
16 binding, and that extends into C-5 as well.

17 And then D is --

18 THE COURT: Well --

19 MR. STANG: -- a recital of --

20 THE COURT: -- I'm sorry. You're --

21 MR. STANG: I'm sorry.

22 THE COURT: It's going to be changed to say they  
23 contend that the --

24 THE COURT: The secured creditor --

25 MR. STANG: Yeah. We're going to have a --

1 THE COURT: -- contends.

2 MR. STANG: We will have a lead-in sentence to all of  
3 these subdivisions --

4 THE COURT: All right.

5 MR. STANG: -- that will condition the content of the  
6 subdivisions.

7 THE COURT: Okay. Thank you.

8 MR. STANG: But rather than doing it in each  
9 paragraph, we'll have a lead-in --

10 THE COURT: That makes sense.

11 MR. STANG: -- conditioning.

12 Then at subpoint D there is the recital of the debtor's  
13 request to use the cash collateral.

14 At subpoint E, it constitutes a finding of good faith for  
15 the negotiation and the motivation behind the use of the cash  
16 collateral.

17 Subpoint F or subparagraph F recites the consent for the  
18 cash-collateral period on the terms and conditions of the  
19 order.

20 Subpoint G recites that the emergency motion or interim  
21 motion was served on the 2nd, and the recitals here were  
22 reflected in Certificates of Service that were filed with the  
23 court.

24 We then turn to the numbered paragraphs which is where the  
25 order actually starts.

1 THE COURT: Now, on the notice, I would add just to  
2 clarify that no -- let's see. "Notice of the interim hearing  
3 to approve the motion." It makes it sound like it's the whole  
4 motion, so I guess --

5 MR. STANG: The motion is defined at --

6 THE COURT: Right. It's --

7 MR. STANG: -- the top as the motion for interim and  
8 final.

9 THE COURT: Yeah. See, that's the problem.

10 MR. STANG: But the motion --

11 THE COURT: So I think --

12 MR. STANG: The motion --

13 THE COURT: -- these --

14 MR. STANG: Oh.

15 THE COURT: If you just add --

16 MR. STANG: Well, your Honor, the motion --

17 THE COURT: -- the word --

18 MR. STANG: I'm sorry. I apologize.

19 THE COURT: No, no, no.

20 MR. STANG: It's hard, yes.

21 THE COURT: It's just --

22 MR. STANG: Yes.

23 THE COURT: It's just hard. That's why I say these  
24 telephonics are so hard.

25 MR. STANG: Yes.



1 THE COURT: What if we say and no further notice of  
2 the motion for interim relief is necessary?

3 MR. STANG: Okay.

4 (Colloquy not on the record.)

5 MR. STANG: Got it.

6 THE COURT: Now, go --

7 MR. STANG: Wait. We should still -- I think we  
8 should still recite -- but it's actually in there at the end,  
9 but okay, so we've got that.

10 And then we turn to the substantive provisions of the  
11 order starting at paragraph 1 which is that it's granted only  
12 on an interim basis. And to the extent there were objections,  
13 that they have been resolved again only for the interim.

14 THE COURT: Correct.

15 MR. STANG: Paragraph 2 is the budget, and I'm  
16 prepared if you want, your Honor, to go through the budget and  
17 explain it to you.

18 The paragraph here does provide for a 15-percent line-item  
19 variance, but it does require, of course, that it's only for  
20 the three-week period.

21 THE COURT: Okay. I think --

22 MR. STANG: As to --

23 THE COURT: -- I need you to go through the budget  
24 because as we know we can't have a final hearing until the  
25 15 days have passed, and the interim order must only be to

1 prevent immediate and irreparable harm.

2 So I think you need to make some sort of record why this  
3 budget relates just to those matters which are to prevent  
4 immediate and irreparable harm.

5 MR. STANG: Okay. First of all, your Honor, I would  
6 refer and rely on the declaration of James Rhodes who is the  
7 principal of the debtors and has decades, decades-long  
8 experience in building and selling homes, and this is a little  
9 editorial.

10 While there is obviously a lot going on between the debtor  
11 and the first-lien lenders regarding what they consider to be  
12 cause for the appointment of a trustee, I think what everyone  
13 agrees on is that Mr. Rhodes knows how to build a house, and  
14 that Mr. Rhodes knows how to sell houses.

15 And in his declaration, he talks about the background of  
16 how he has risen in the ranks if you will of homebuilders not  
17 just because those ranks are being thinned out, but, also,  
18 because that would naturally make you become higher up on the  
19 list of the largest, but, also, because he is good at what he  
20 does in a very difficult financial environment.

21 We would also rely on the declaration of Paul Huygens who  
22 is a consultant to the company and was formerly the company's  
23 CFO.

24 So, your Honor, in lines 1 through 10, you have the total  
25 receipts. And the way the company looks at its revenue, you've

1 got standing inventory which is a house. You could walk into  
2 that house, and you could buy it and live in it the next day.  
3 That's what we called the standing inventory.

4 And then you've got homes not started. This would be  
5 where we have a finished lot, and we're ready to sell the lot.  
6 Well, we've sold the lot, and we're ready to start building the  
7 house for the person who bought the lot.

8 Now, we don't have to be the builder, but these are  
9 projections for those instances where we will be the  
10 builder.

11 And then you have a standing inventory projected which is  
12 well beyond the three-week period, so maybe we shouldn't just  
13 spend a lot of time on that --

14 THE COURT: Okay.

15 MR. STANG: -- since we're not expending any money --

16 THE COURT: Right. Let's just talk about --

17 MR. STANG: -- during the three weeks.

18 THE COURT: -- this interim for the moment --

19 MR. STANG: Right. We also --

20 THE COURT: -- since that's our --

21 MR. STANG: We also operate a golf course associated  
22 with one of the projects, so that's the Tuscany Golf Course  
23 revenues coming in at line 8, and so that's basically the  
24 revenues.

25 On the expenditures, we first start off with insurance

1 financing which we think it speaks for itself as to being  
2 critical to protect the estate.

3 IT services which are renewals of software licenses.  
4 We've got storage and rent expenses which we're required to pay  
5 under 365 on a timely basis.

6 THE COURT: And those IT --

7 MR. STANG: A --

8 THE COURT: And, again, looking just for the ten days  
9 because we're talking about an interim order, those IT expenses  
10 need to be paid at this level as opposed to, for example,  
11 outside the 17th.

12 MR. STANG: Well, we always could push things out,  
13 and I don't know that the software codes disappear. I honestly  
14 don't know if that happens electronically somehow.

15 That might be a violation of the stay. But when it's  
16 done, it's hard to get it back. These are payments that are  
17 due as scheduled, and the IT is critical to the company's --

18 THE COURT: Okay.

19 MR. STANG: -- accounting staff and operations --

20 THE COURT: Okay. So these are --

21 MR. STANG: -- on --

22 THE COURT: When you talk about these payments, these  
23 are payments due as scheduled on those dates --

24 MR. STANG: Yes, ma'am.

25 THE COURT: -- on whatever category.

1 MR. STANG: Yes. Under these --

2 THE COURT: Okay.

3 MR. STANG: There are some instances here where we  
4 are considering prepaying some vendors because it's hard to get  
5 a project started and tell someone, essentially, put me on a  
6 COD basis, and I'm only going to operate for ten days.

7 So in certain instances, we are looking at some vendor  
8 prepays in the hopes of getting them started to even undertake  
9 the work, but these particular ones are as scheduled as due --

10 THE COURT: Okay.

11 MR. STANG: -- on the dates we're showing.

12 HOA fees -- so we've got some rent payments which are  
13 required to be made. We can't defer those per the code.

14 THE COURT: And they're third --

15 MR. STANG: Brokerage --

16 THE COURT: They're rent to third parties?

17 MR. STANG: Yes, ma'am. The rent on lines, the 13  
18 and 14, are not insider leases, though. The --

19 THE COURT: Okay.

20 MR. STANG: You've got a brokerage license which is a  
21 nominal amount --

22 THE COURT: Um-h'm.

23 MR. STANG: -- for the realty license.

24 HOA fees, we own homes in these projects because we  
25 haven't sold them, yet. The HOA fees are due. This is

1 important to us because if we start having problems with the  
2 homeowners it's bad reputationally, too.

3 When someone wants to buy the house, they go around, and  
4 they talk to their neighbors, you know, how's the swimming  
5 pool, how's the golf course.

6 We are projecting that we will have seven house closings  
7 during this interim period, and we don't want to give people an  
8 excuse to bail out of the closings which are reflected on  
9 line 4 and projecting revenues of approximately a  
10 million-one-thirty.

11 THE COURT: Okay.

12 MR. STANG: Model-home leases, these are model homes  
13 that have been sold to third parties. They are not insiders.  
14 They are not related by blood or marriage to Mr. Rhodes.

15 And they lease the homes back to the debtor, so that they  
16 can be shown as models. It has to be paid per the code. We  
17 filed on the 1st. There's no stub issue here, and that's --

18 THE COURT: Okay.

19 MR. STANG: That's why that's there.

20 The line 19 is our payroll. It says Rhodes Homes payroll.  
21 That is a consolidated payroll. And in our wages motion, we do  
22 break it out debtor by debtor as to how many employees are on  
23 each.

24 This does not include any compensation for Mr. Rhodes.  
25 That will be subject to an insider motion. And although

1 Mrs. Rhodes and Mr. Rhodes' brother were employees of the  
2 company prepetition, they are not drawing any compensation  
3 direct or indirect postpetition, and they're not included in  
4 these numbers.

5 THE COURT: Okay.

6 MR. STANG: And line 20, the ordinary-course  
7 professionals, are as I said before while scheduled will not be  
8 paid absent procedures pursuant to a court order.

9 And then we've got other payrolls both at Pinnacle which  
10 is, you know, a debtor, but it does grading work,  
11 g-r-a-d-i-n-g, grading work for both the companies, the debtor  
12 companies, but, also, for third parties, and those are  
13 postpetition.

14 Pinnacle, those are postpetition payrolls. I'm sorry,  
15 your Honor. That's not correct. The Pinnacle payroll and the  
16 AZ payroll reflect approximately three days of prepetition  
17 wages and salaries again not to insiders.

18 THE COURT: Okay.

19 MR. STANG: We do have a wages motion. I don't know  
20 if your practice is to let that roll in through the cash  
21 collateral, but we do have a separate wages motion that has  
22 been uploaded --

23 THE COURT: Okay.

24 MR. STANG: -- all of them within the priority  
25 amount. Let's see.

1 Pinnacle job, line 25, the debtor, the Pinnacle debtor, is  
2 engaged in grading operations for nondebtors under Public Works  
3 projects in Arizona. One is a city-jail project, and the other  
4 one is Public Works. I'm not sure exactly what the nature of  
5 it is.

6 The reason that we feel the need to go forward with this  
7 during the emergency period is, A, it brings in some revenue,  
8 but that -- hello?

9 THE COURT: Yes.

10 MR. STANG: Yeah. I'm sorry. The line lost a little  
11 static sound, and I thought I had gotten cut off.

12 THE COURT: No. I think --

13 MR. STANG: The most --

14 THE COURT: -- it was just --

15 MR. STANG: The most important aspect of this is that  
16 these are all bonded projects. And if we don't do the work in  
17 accordance with the Public Works project time lines, it could  
18 trigger the bonds, and the claims in this case are going to  
19 become much, much greater.

20 THE COURT: Okay.

21 MR. STANG: We are on the verge of completing this  
22 job. There's a substantial retention that will come into the  
23 estates if it's completed.

24 And so we think it's necessary, A, to generate the  
25 revenue, but, more importantly, to prevent further complication



1 in this case by virtue of the bonding companies getting  
2 involved.

3 THE COURT: Okay.

4 MR. STANG: I should tell you just for, you know,  
5 absolutely frankness Mr. Rhodes is an indemnitor or a guarantor  
6 of those Public Works bonds.

7 And so he has, certainly, an interest in having this work  
8 done, but I think the case has an interest in seeing this work  
9 get done as well.

10 Then there are various vertical costs which is putting the  
11 house up, grading costs relating to the lots, and I'm really  
12 working through lines 25 through 29 here.

13 THE COURT: Right.

14 MR. STANG: And we think it's necessary to keep these  
15 projects going because it's hard to pull people off and then  
16 get them to come back.

17 And I can't tell you that it will -- what the nature --  
18 what the extent of the damage is in a monetary sense. But,  
19 certainly, in a continuity sense of telling people to leave and  
20 then telling them we'll call you back on the 18th, it's just  
21 not the way to operate a business.

22 We have gone through these numbers with Westchester  
23 (phonetic) in very great detail on Monday night and Monday and  
24 Monday night.

25 And it is a budget that at least the agents who have been

1 very conservative with us about what to do during the next  
2 ten days have agreed to.

3 The warranty repairs on line 31 as I said is not a  
4 reserve, but this is our estimate of what it would cost. The  
5 CFO has asked me to let you know that no warranties are being  
6 approved without his specific approval and with specific backup  
7 as to each check that he's being asked to sign.

8 We are in the process by the way of changing the signature  
9 cards as I may have mentioned yesterday in court. Even before  
10 those are changed, however, no checks will go out the door  
11 without the CFO's specific approval.

12 So at the moment -- you know, maybe by tonight he will be.  
13 But at the moment, he is not a signatory. The items don't have  
14 expenditures.

15 Going into lines 37, we have sales and marketing. We are  
16 still trying to sell homes that are part of our standing  
17 inventory.

18 GNA (phonetic), there is a formula that we use, and I  
19 believe it is five percent, but it might be as high as  
20 eight percent.

21 Of every construction dollar expended by any of the debtor  
22 entities -- I'm going to use five percent in this  
23 presentation -- five percent of that construction cost is  
24 assessed if you will as a GNA expense and driven up into I  
25 think it Rhodes Design & Development, and that's how the GNA is

1 funded from the various debtors.

2 It's a straightforward formula. There's no put your  
3 finger up in the air and see which way the wind's blowing on  
4 how busy each entity is. It's the way it's been done  
5 throughout Mr. Rhodes' career as a developer. Let's see.

6 The other things, the debtor's restructuring  
7 professionals, again, subject as I said to the employment  
8 issues.

9 Lenders' professionals, your Honor -- we're at  
10 line 44 -- this is being paid over as part of the adequate  
11 protection.

12 The order specifically states that it is subject to  
13 recharacterization under Section 506 because we don't have  
14 valuation of the assets, yet, and we're not in a position to  
15 agree that they're entitled to attorneys fees.

16 At line 45, the company has at least two consulting firms.  
17 One is Mr. Huygens' firm which is going to be the subject of an  
18 employment application.

19 The other one is a firm that the principal who's providing  
20 services to the debtor now is a Mr. Jeff Barsey (phonetic).  
21 Mr. Barsey at one time worked for Credit Suisse, but, actually,  
22 worked on the due diligence and funding of this particular  
23 credit.

24 He left I think over a year ago, maybe longer than that,  
25 and we're going to do an employment application. I don't know

1 if the lenders are going to object to that or not, but we  
2 certainly talked about it with them.

3 But in connection with these expenditures, your Honor,  
4 these folks live out of town, and the company decided that it  
5 would provide rental housing to them in lieu of them charging  
6 hotel-room rates.

7 They lease a home. The company reimburses them for a  
8 housing cost. They rent a home. I think they rent it as  
9 opposed to the company renting it, but the company pays the  
10 rent on a home owned by Mrs. Rhodes.

11 It is a 3,000-square-foot house. They pay approximately  
12 \$2500 a month in rent. It is used by three gentlemen who are  
13 there during the week.

14 And that is an expense that comes back if you will to an  
15 insider. That has been in effect for at least a couple of  
16 months, and I wanted you to know that.

17 THE COURT: Okay.

18 MR. STANG: So that is --

19 THE COURT: And I think --

20 MR. STANG: -- the totality --

21 THE COURT: -- maybe the --

22 MR. STANG: -- of the budget.

23 THE COURT: The point with that last thing is -- and  
24 it's sort of like I hear what you're saying, and, probably,  
25 that expense is an appropriate expense.

1           It remains to be seen whether it ultimately is an  
2           appropriate -- to whom it's to be paid, but it makes sense that  
3           you're going to have this expense in the budget at least in the  
4           future for your consultants if that's part of the package.

5           Is it appropriate in the ten days? I don't know. But at  
6           least, it's, you know, arguably to be put in the budget and  
7           dealt with.

8           MR. STANG: Your Honor, because it's a real estate  
9           lease, we budgeted -- I mean, we talked about this, and I'm  
10          very sensitive to the insider issues in any case, but this one,  
11          you know, seems to be one where it's really a hot button.

12          Because it's a real estate lease, I told them they had to  
13          show it being funded, you know, as required by the lease, and  
14          that's why it's in there; otherwise, we would have tried to  
15          have pushed it out.

16          I don't have Mrs. Rhodes' consent to push it out.  
17          Mr. Rhodes shuddered when I talked to him about the idea of  
18          deferring it, but that's what that is.

19          And we do think it is less in total for a month than what  
20          they would charge for their weekday hotel accommodations even  
21          if they were staying at, you know --

22          THE COURT: Well, I think --

23          MR. STANG: -- not at one --

24          THE COURT: -- it's probably appropriate --

25          MR. STANG: -- of the glitzier hotels.

1 THE COURT: -- to budget that amount. You can put it  
2 in your trust account. But for heaven sakes, we can wait 'til  
3 the 17th because, you know --

4 MR. STANG: Okay.

5 THE COURT: -- you'd probably pay it on the 1st,  
6 anyway, and see what happens.

7 MR. STANG: All right. So we'll disburse it into my  
8 firm's trust account and hold it pending the 17th?

9 THE COURT: Yes.

10 MR. STANG: Is that what --

11 THE COURT: And then --

12 MR. STANG: -- you'd like? Okay.

13 THE COURT: And --

14 MR. STANG: That's what we'll do.

15 THE COURT: And then that leaves other people the  
16 chance to discuss it, you know, weigh the cost benefit --

17 MR. STANG: Right.

18 THE COURT: -- market rents, et cetera.

19 MR. STANG: Maybe Mr. Dix (phonetic) will take some  
20 time and go look at the house.

21 So, your Honor, if we go back to the order now, that is  
22 paragraph 3.

23 THE COURT: All right.

24 MR. STANG: There is a --

25 MR. NAGUIAT: Excuse me, your Honor.

1           Excuse me, Jim.

2           MR. STANG: Yes. Go ahead.

3           MR. NAGUIAT: Your Honor, if I may? It's  
4 Ramon Naguiat on behalf of Credit Suisse. Just one bit of  
5 clarification with respect to the line item for the lenders'  
6 professionals.

7           As I'm sure Mr. Stang will get to later, I just wanted to  
8 clarify that the lenders' professionals line item deals only  
9 with the Steering Committee's professionals which the parties  
10 were able to agree to under the proposed interim  
11 cash-collateral order.

12           The first -- excuse me. The first-lien-agent professional  
13 fees are not covered in there, and we have reserved our rights  
14 as set forth in the order.

15           But I did just want to make that clarification that at  
16 this time we couldn't reach an agreement with respect to  
17 payment of the first-lien agent's fees. I apologize for  
18 interrupting.

19           THE COURT: Okay. No. I appreciate it.

20           Now, tell me, though, how does that fit within the idea of  
21 immediate and irreparable harm that they're paid within these  
22 ten days?

23           MR. STANG: Your Honor, I didn't want my arm broken  
24 (indiscernible). Personally, I'm going to -- you know what?  
25 I'm going to let Mr. Dublin speak to that. I am not going to

1 try.

2 MR. DUBLIN: And, your Honor, the lenders require --  
3 I'm sorry. Phil Dublin. I apologize for not announcing my  
4 name at beginning of speaking.

5 The lenders obviously have a significant amount of work  
6 that needs to be done over the next ten days leading up to a  
7 trustee hearing, a cash-collateral hearing, on the 17th and  
8 require the professionals to assist them.

9 The professionals have also been working extensively  
10 for the lenders leading up to the filing and since the  
11 filing.

12 And with no other allocation for a provision of  
13 compensation, we thought it was appropriate as part of an  
14 adequate-protection package that the professionals for the  
15 lenders for the First Lien Steering Committee lenders be  
16 compensated.

17 Again, as Mr. Stang mentioned, there is a provision that  
18 provides for the potential recharacterization of those amounts  
19 for the reduction of principal to the extent it is determined  
20 at a later date that those payments should not have been paid  
21 under Section 506.

22 MR. NAGUIAT: And --

23 THE COURT: And I guess --

24 MR. NAGUIAT: -- your Honor --

25 THE COURT: -- I'm a little --



1 MR. NAGUIAT: -- if I may?

2 THE COURT: Um-h'm.

3 MR. NAGUIAT: I'm sorry.

4 THE COURT: Go ahead.

5 MR. NAGUIAT: It's Ramon Naguiat again on behalf of  
6 Credit Suisse. Your Honor, I did not in any way mean to  
7 intimate that we had any problem with the payment of those fees  
8 and just wanted to go on the record as saying we do believe  
9 that the work that the Steering Committee is doing is valuable,  
10 and I did not mean to intimate otherwise.

11 Thank you.

12 THE COURT: I understand. I understand why the  
13 lender wants it. I understand why the debtor doesn't oppose  
14 it, but the test is immediate and irreparable harm.

15 So I'm just not quite sure how that -- I mean, let's  
16 assume you had all walked in here the first day hand in hand.  
17 I couldn't have approved the payment of those fees pending the  
18 final hearing, could I?

19 MR. DUBLIN: And I believe you -- Phil Dublin again,  
20 your Honor. I believe you can as part of an  
21 adequate-protection package.

22 THE COURT: Within the first 15 days --

23 MR. DUBLIN: Yes.

24 THE COURT: -- immediate and irreparable harm?

25 MR. DUBLIN: Yes. To the lenders, your Honor,

1 absolutely. And to the extent that the Court is not going to  
2 authorize the payment of the fees as contemplated by the  
3 agreed-upon cash-collateral budget in the budget and the  
4 proposed cash-collateral order, I would have to go back to my  
5 firm -- and I believe the others would as well -- to determine  
6 if we would continue in the engagement based on the risk.

7 We are in a situation where the debtor's professionals  
8 received prepetition retainers, hundreds of thousands of  
9 dollars if not more, so in a position where they are not  
10 necessarily at the same risk as the other professionals --

11 THE COURT: Well --

12 MR. DUBLIN: -- that are involved --

13 THE COURT: Well, I have to deal --

14 MR. DUBLIN: -- in this --

15 THE COURT: -- with silly things --

16 MR. DUBLIN: -- (indiscernible).

17 THE COURT: -- like rules. I know that doesn't mean  
18 a lot to you, but let's look at the code. 4001, agreement,  
19 hearing. Let's see. (Indiscernible). Let's see. Cash  
20 collateral. (Indiscernible) and not on 20 days  
21 (indiscernible).

22 Well, arguably, Mr. Landis, what's your thoughts?

23 I guess it doesn't come within 6003. We're now dealing  
24 with an agreement.

25 MR. LANDIS: I think that the issue, Judge --

1 Augie Landis, Assistant United States Trustee. It probably  
2 does come outside of the scope of Rule 6003(b) because of the  
3 exception for motions that fall within Rule 4001 --

4 THE COURT: 1.

5 MR. LANDIS: -- which takes you back I think to  
6 Rule 4001.

7 And with respect to this issue to the extent that you're  
8 talking about the motion, you're probably looking at use of  
9 cash collateral --

10 THE COURT: Right.

11 MR. LANDIS: -- (b)(2), talking about the hearing,  
12 and it says, "The Court may authorize the use of only that  
13 amount of cash collateral as necessary to avoid immediate and  
14 irreparable harm to the estate pending a final hearing."  
15 That's what I think you were referring to.

16 THE COURT: Right. Now --

17 MR. LANDIS: That would --

18 THE COURT: Right. And now we have an agreement.

19 MR. LANDIS: Which --

20 THE COURT: So that provision --

21 MR. LANDIS: Which takes us to D, right?

22 THE COURT: Right. And that provision isn't  
23 specifically in there, is it?

24 MR. LANDIS: It isn't, but, again, the Court may  
25 direct that the procedures prescribed in paragraphs 1, 2, and 3

1 of the subdivision shall not apply.

2 THE COURT: Right.

3 MR. LANDIS: And the agreement may be approved  
4 without further notice if a motion was sufficient to afford  
5 reasonable motives of the material provisions in the agreement  
6 an opportunity for a hearing, so, really, what you're talking  
7 about in the context of an agreement is due-process concerns.

8 THE COURT: So I don't have immediate and irreparable  
9 which I would have if we started out -- sorry to work my way  
10 through this.

11 We started out with the use of cash collateral. So if  
12 they had offered that, it's only so much as immediate and  
13 irreparable harm.

14 Now we have an agreement, and we don't have that provision  
15 which says that the final hearing --

16 MR. LANDIS: Again, Judge, I think what you're really  
17 focused on now that there is an agreement is --

18 THE COURT: Now there's an agreement. I --

19 MR. LANDIS: -- the due-process component.

20 THE COURT: That's right. Now I've got to give -- I  
21 can't approve the agreement until after 15 days or I could. I  
22 don't think it's appropriate in this case.

23 (Colloquy not on the record.)

24 THE COURT: Objections may be filed 15 days -- all  
25 right. You're right, so it can be allowed. I don't have the

1 same -- and, of course, the reason is because since you've  
2 agreed on the budget, and it's your ox that's getting gored,  
3 that's the relevance, so all right, so that's appropriate.

4 Now, we don't -- are there any junior lien -- voluntary  
5 lien creditors that we haven't heard from?

6 MR. STANG: Your Honor, the agent for the second is  
7 on. This is Mr. Stang. The agent for the second is on the  
8 phone.

9 THE COURT: Okay. And there aren't any other --

10 MR. DeAMICIS: Yeah. And, your Honor, this is  
11 Don DeAmicis again representing the agent for the seconds.

12 You know, we expect to -- well, the agent was a successor  
13 agent that just got appointed sort of late yesterday, and we  
14 expect to review everything, get up to speed --

15 THE COURT: Okay.

16 MR. DeAMICIS: -- and decide what we're going to  
17 do --

18 THE COURT: Okay.

19 MR. DeAMICIS: -- by --

20 THE COURT: Okay.

21 MR. DeAMICIS: -- the final hearing.

22 THE COURT: All right. So for an interim matter -- I  
23 mean, again, since -- as an interim matter subject to any  
24 further objections, I'm willing to allow the moneys to be paid  
25 subject to recharacterization to the Steering Committee

1 professionals as set forth --

2 MR. STANG: Okay.

3 THE COURT: -- in the budget.

4 MR. STANG: So, your Honor, to get back to the order,  
5 that was paragraph -- essentially, we're at paragraph 3. And  
6 at 3-B, there are some reporting requirements that are within  
7 the company's ability to perform on variances from week to week  
8 versus the ten days, but I hope this is a template for the  
9 future. We will only engage in ordinary-course business  
10 transactions during the ten-day period.

11 And then at paragraph 5 we lead into what their adequate  
12 protection is.

13 THE COURT: Okay.

14 MR. STANG: And their adequate protection is  
15 replacement liens on all property of the estate except  
16 avoidance actions. That has been taken out. It is that except  
17 if you will is about five lines up from the bottom --

18 THE COURT: Yes.

19 MR. STANG: -- of paragraph --

20 THE COURT: I saw that.

21 MR. STANG: Oh, (indiscernible), and it's only for a  
22 diminution in value.

23 And then at subpoint B they get the administrative  
24 priority claim, the superpriority administrative priority  
25 claim, that if you will parallels that diminution in value.

1 I should point out there was a bit of a carve-out here on  
2 their -- not on their lien, replacement lien, but on their  
3 superpriority claim, and that carve-out is the sentence  
4 following the straight cite of code sections.

5 And, basically, what it says is that they don't have a  
6 superpriority as to admin claims incurred by the debtor under  
7 the cash flow, under the budget, because what I said to the  
8 lenders was we can't tell people --

9 THE COURT: Right.

10 MR. STANG: It's one thing to say we can't pay the  
11 cash, but to ask them to work and then tell them that they're  
12 subordinated was just a bit too much.

13 I also, frankly, you know, looked out for people who got  
14 prepetition retainers because it doesn't extend to the  
15 administrative claims for those professionals.

16 And it also anticipates a carve-out for a  
17 Creditors Committee, though it doesn't have a dollar amount  
18 because the lenders didn't have anyone to talk to, yet.

19 THE COURT: Okay.

20 MR. STANG: There is a provision that limit --  
21 Mr. Rhodes has a minority interest though it is 49 percent in a  
22 company called Spirit Underground which lays underground cable  
23 and electrical conduit and that sort of thing.

24 It is actually one of the largest in Nevada, and so that  
25 company does some work for the debtors, but it's limited to

1     \$30,000 per the order, and that's about two sentences up from  
2     the end of Subsection B.

3             Subsection C provides for the fees that we just talked  
4     about. After you see the recitals as to the amounts, there is  
5     a sentence that says subject to recharacterization --

6             THE COURT: Right.

7             MR. STANG: -- under 506(b).

8             Subsection D is more reporting. There is a requirement  
9     that if we know of an event that constitutes a default that we  
10    tell the lenders and not keep it a secret.

11            There is a provision for giving information to the  
12    Steering Committee which was negotiated the day before the  
13    hearing during some depositions.

14            Subpoint E is the check-signing authority we talked about.

15            Paragraph 6 says you don't have to go file your perfection  
16    documents for your replacement lien.

17            Subpoint 7 is a 506(c) waiver, and, perhaps, we need to  
18    address that in the context of -- well, it does say except as  
19    set forth herein, and so there is the contemplation of a  
20    reasonable carve-out for the committee. We don't know that  
21    dollar amount, yet.

22            But in the context of having said there will be a  
23    reasonable carve-out for the committee, I think the 506(c)  
24    waiver is appropriate.

25            I don't know if you want to put the time collar on this



1 like we did earlier, but this is where the 506(c) issue comes  
2 up.

3 THE COURT: Okay.

4 MR. STANG: In my mind, your Honor, 506(c) waivers  
5 are quid pro quos for carve-outs and in their retainers, large  
6 retainers, and my firm got a large retainer in this case.

7 And so, you know, because we don't have that  
8 quid pro quo going, yet, I wanted to really bring it to your  
9 attention.

10 THE COURT: Okay. So --

11 MR. STANG: But --

12 THE COURT: -- for an interim --

13 MR. STANG: But --

14 THE COURT: In other words, should we limit this  
15 provision until we have a final order?

16 MR. DUBLIN: Your Honor --

17 MR. STANG: I --

18 MR. DUBLIN: -- Phil Dublin for the First Lien  
19 Steering Committee. This, the provision, is only for the  
20 period for which there is consensual use of the cash  
21 collateral.

22 THE COURT: Okay. All right.

23 MR. STANG: Okay. You know what? I'm sorry,  
24 Mr. Dublin. You're right. I --

25 THE COURT: That's right.

1 MR. STANG: I apologize --

2 THE COURT: That's right.

3 MR. STANG: -- for going on --

4 THE COURT: Oh --

5 MR. STANG: -- about that.

6 THE COURT: -- okay. Thank you.

7 And then paragraph 8 or going on, rather.

8 MR. STANG: Yeah. Paragraph 8 is that they have a  
9 superpriority claim to the extent provided for in the order for  
10 their diminution.

11 Paragraph 9 is they get to reserve rights including the  
12 right to seek relief from the stay to foreclose on their  
13 collateral, to request a dismissal, conversion, appointment of  
14 a trustee which, of course, they've done, propose their own  
15 plan when exclusivity is no longer in force, and to always ask  
16 for more adequate protection as appropriate.

17 THE COURT: I need to go back. I'm pretty sure this  
18 is the case, but I just need confirmation. All these adequate  
19 protection, by administrative priority, by additional liens  
20 only goes to the extent of diminution of value. It doesn't  
21 attempt to wrap any prior debt, correct?

22 MR. STANG: Yeah. Mr. Stang. From the debtor, that  
23 is our understanding.

24 THE COURT: Okay.

25 MR. DUBLIN: This is Phil Dublin. That's correct,

1 your Honor.

2 THE COURT: All right. Thank you.

3 MR. STANG: Paragraph 10 is the challenge period, and  
4 this is an area where I think we need to in light of your  
5 comments, your Honor, about recitals of acknowledging what is  
6 alleged we did that recital C. We need to go back and either  
7 eliminate this entirely or somehow address what's going on  
8 here.

9 THE COURT: In other words, I --

10 MR. STANG: Basically --

11 THE COURT: It may be appropriate in a final order.  
12 I don't think it's appropriate in an interim order the same as  
13 before.

14 MR. DUBLIN: Your Honor, this is Phil Dublin. We can  
15 just take out paragraph 10.

16 THE COURT: All right. And then when you make --

17 MR. STANG: I --

18 THE COURT: When you file your motion, you're going  
19 to need to make sure that you have the final draft of the  
20 agreement in there.

21 And, of course, when you do your final motion, you're  
22 going to have to comply with the 4001 provision, so that will  
23 be brought to everyone's attention.

24 MR. STANG: Okay.

25 THE COURT: Okay.

1 MR. STANG: Well, that cut down the order a bit.

2 We're on to paragraph 11, then, your Honor.

3 THE COURT: All right.

4 MR. STANG: And these are termination events. This  
5 is on its own. It expires on its own on the 17th, and then  
6 there are other termination events which include noncompliance,  
7 a material adverse change.

8 We can't enter into any transaction. You know, we have to  
9 actually do ordinary course. We can't try to prime them and if  
10 there's a conversion or a dismissal. Those are all cash.

11 And so I have just raced through Roman Numeral V. It's a  
12 page turn for me.

13 6, no priming.

14 7, we have to make the payments to them by the end of the  
15 day.

16 By the way, we don't have -- I don't think we have the  
17 wiring instructions for the Winchester Group, but we do for the  
18 other two lender professionals.

19 MR. DUBLIN: I will --

20 MR. STANG: So --

21 MR. DUBLIN: I will forward that to you. I  
22 apologize.

23 MR. STANG: Okay. We have the document production  
24 that we agreed to. We're going to give access to people.  
25 We're going to look at that a little more in a moment.

1 We're now at No. 9, and that's basically it.

2 At subpoint B, your Honor -- and believe it or not, this  
3 was why we were out of the room for at least part of the time  
4 yesterday -- we are going to have the Winchester Group which  
5 are financial advisors for the first lienholders come into the  
6 debtor's offices and camp out for a couple of days.

7 They're going to get their document production which is  
8 Exhibit C. They get to ask for follow-up documents, and we'll  
9 try as best we can. We'll make a good-faith effort to get that  
10 to them.

11 But, most importantly, we are giving them -- let's see --  
12 one, two, three, four, four-and-a- -- three-and-a- -- oh, sorry  
13 -- one, two, three-and-a-half days of interviews with company  
14 employees, and we think that's a very significant due-diligence  
15 opportunity for the first-lien creditors.

16 THE COURT: Okay.

17 MR. STANG: Just to point out, they are going to be  
18 hosted by a company employee during those interviews, but  
19 Mr. Rhodes will not be that company employee.

20 THE COURT: All right.

21 MR. STANG: Let's see. Upon a cash-collateral  
22 termination event and two-days' notice, they -- I'm sorry.  
23 They provide two-days' notice to the debtors of a termination  
24 event, and we get to come in during that two-day period and  
25 tell you why a termination event has not occurred.

1           There is no relief from stay for them to foreclose on  
2           their collateral as the result of a cash-collateral termination  
3           event. It's simply the cessation of the use of cash  
4           collateral.

5           THE COURT: All right.

6           MR. STANG: Let's see. Roman Numeral II is fairly  
7           standard. That they don't waive anything by having failed to  
8           seek it.

9           Paragraph 12, we don't grant liens on the prepetition  
10          collateral.

11          13 is the successor to the signed provision regarding the  
12          order. You pointed that out just a few minutes ago about it  
13          being binding on the trustee.

14          14, no discharge of the obligations under this order under  
15          Section 1141 until all obligations under the order are paid.

16          No modification provision in 15.

17          16, no right of setoff.

18          17, no delay on the effectiveness of the order. Oh, let's  
19          see.

20          Chapter 7 conversion doesn't affect the provisions of the  
21          order or anything granted under it.

22          And then, finally, paragraph 19 is the scheduling of the  
23          final hearing. We are contemplating that we could get out  
24          notice of the final hearing in today's mail to the parties  
25          indicated.

1 THE COURT: Okay.

2 MR. DUBLIN: Your Honor, Phil Dublin. One more  
3 comment for Mr. Stang is that based on the changes to  
4 paragraph C and the removal of paragraph 10 the proviso in  
5 paragraph 20 should be removed.

6 THE COURT: And what you could do if you want --

7 MR. STANG: Yes.

8 THE COURT: -- to send it out today is --

9 MR. STANG: Thank you.

10 THE COURT: Oh, that's right. You're ready to go on  
11 the final motion. That's right. We're just changing the  
12 interim order.

13 MR. STANG: Right.

14 THE COURT: Correct.

15 MR. STANG: Right.

16 THE COURT: I would like you to also serve any entity  
17 that purports to hold a mechanic lien.

18 MR. STANG: Your Honor, let me tell you. I talked to  
19 Mr. Rhodes about this after the hearing because of --

20 THE COURT: Uh-huh.

21 MR. STANG: -- your comments. What he said to me was  
22 -- first of all, just so you know -- and I'm not trying to  
23 change any service requirement -- the company tends to focus  
24 much, much, much of its work on about 25 to 30  
25 subcontractors.

1 THE COURT: Um-h'm.

2 MR. STANG: And so we don't have a numerosity problem  
3 in terms of getting out this kind of notice. He said he's not  
4 aware, and we'll obviously double-check.

5 But that he's not aware of anyone who has actually  
6 perfected a mechanic's lien on the property, but, obviously,  
7 people do their preliminary notices as a means of, you know,  
8 protecting themselves.

9 So I think what we'll just do is we'll end up serving, you  
10 know, probably everybody, I mean, not the homeowners.

11 THE COURT: Right.

12 MR. STANG: But we're going to end up -- I think we  
13 should just serve all the vendors and cover ourselves that way.

14 THE COURT: Okay.

15 MR. DeAMICIS: Your Honor?

16 THE COURT: Yes.

17 MR. DeAMICIS: Your Honor, it's Don DeAmicis  
18 representing the second lienholders. A request, perhaps, to  
19 Mr. Stang, if I may?

20 And that is to the extent that documents are being  
21 provided to the first lienholders we have liens that, you know,  
22 cover the same collateral. We would also like to have the  
23 benefit of that documentary production.

24 MR. STANG: Your Honor, I guess two thoughts.  
25 Number one, if the second agent is consenting or is not



1 objecting I should say to the relief sought, you know, if  
2 that's a nice quid pro quo.

3 The second thing is there is a -- I'm not sure how we're  
4 delivering these documents. I'm not sure that they're all  
5 going to be electronically scanned. It may be because Mr. Dix  
6 of Westchester is sitting in our offices. We're going to just  
7 drop them on his table.

8 I can't guarantee that we can get them to the second agent  
9 in the same time frame because it will require some  
10 transmission if they're not electronically produced.

11 But we have no problem giving the second agent the  
12 documents. I just don't know that it will be by 5:00 p.m. this  
13 Friday.

14 THE COURT: Okay.

15 MR. STANG: But I'll work with counsel, so that they  
16 get this stuff as quickly as possible after or as we have  
17 produced it to the first.

18 THE COURT: Okay. And one other on noticing -- I  
19 think you're going to cover it -- I'm a little confused about  
20 Pinnacle.

21 But since it looks like Pinnacle is -- the assets are  
22 being used and given in Pinnacle, and there might be some --  
23 I'm not quite sure how it's funding through. Make sure that  
24 all the creditors of Pinnacle receive notice.

25 MR. STANG: Pinnacle is a debtor, your Honor.

1 THE COURT: I know.

2 MR. STANG: Okay.

3 THE COURT: All the creditors --

4 MR. STANG: Okay.

5 THE COURT: -- of Pinnacle --

6 MR. STANG: Okay.

7 THE COURT: -- unless they're --

8 MR. STANG: Got it.

9 THE COURT: I assume they're not that many.

10 MR. STANG: I don't know, your Honor. Your Honor,  
11 Ms. Cho who is on the line and who is going to hunt me down at  
12 the end of this hearing has sent me an E-mail saying we have  
13 300 pages of UCC-1 holders.

14 THE COURT: Oh.

15 MR. STANG: I'm not sure how much that is of kind of  
16 repeated the same names. I guess my question to you is could  
17 we provide that we give out notice by end of tomorrow as  
18 opposed to end of today because it --

19 THE COURT: Certainly.

20 MR. STANG: Okay. Thank you.

21 THE COURT: Mr. Landis.

22 MR. LANDIS: I just want to make sure, Judge. In  
23 order to make certain this thing doesn't come back and bite us  
24 from a service perspective, 4001(d), Subsection C talks about  
25 service, and it talks about a committee -- and, of course, we

1 don't have one of those -- if it's a reorganization case and no  
2 committee has been formed on the creditors included on the list  
3 under Rule 1007(d) and then, two, on any other entity that the  
4 Court directs.

5 I just want to make sure that we're absolutely clear that  
6 in addition to any other parties we've talked about that at a  
7 minimum the consolidated list of the 20-largest unsecureds gets  
8 it --

9 THE COURT: Right.

10 MR. LANDIS: -- as well.

11 THE COURT: I had presumed that as a given. These  
12 were like additional, but I think you're absolutely right for  
13 making that clear, so it's that consolidated list you had plus  
14 the Pinnacle creditors.

15 Obviously, if you want to serve all the creditors except  
16 the homeowners, that's fine. I would only direct that it be  
17 anyone who could claim an interest in the collateral --

18 MR. STANG: Right.

19 THE COURT: -- and then the Pinnacle creditors and  
20 then the top 25.

21 MR. STANG: Okay.

22 THE COURT: And you're right. It may be easier just  
23 to send it out than trying to sort through.

24 MR. STANG: Yeah. I think it may be based on the  
25 statements to me by Mr. Rhodes that they don't have a lot of

1 suppliers, but I think by having tomorrow to sort through some  
2 of this stuff will be sufficient.

3 THE COURT: All right. Fine. And make sure your  
4 motion -- you know, you're going to have comply with 4001(d) on  
5 the copy of the agreement and a proposed form of order. Let's  
6 see. I'll --

7 MR. STANG: Yeah. If we're just going forward on  
8 the --

9 THE COURT: Why don't we just do a summary. I'll  
10 allow you to -- make sure you file your motion and the proposed  
11 form of order, and then I'll allow you to do the motion just  
12 due to the concise summary.

13 MR. STANG: Okay.

14 THE COURT: And I'm not going to -- I won't require  
15 you to mail a copy of the agreement, but with directions where  
16 they can find it, what document number they can find it on  
17 PACER.

18 MR. STANG: Okay.

19 THE COURT: And are you going to do a Web site?

20 MR. STANG: We have one. I just have to remember the  
21 extent to which Omni is providing us that kind of facility.

22 MS. CHO: It --

23 MR. STANG: I'm not sure they're running a pleading  
24 Web site for us.

25 THE COURT: Okay.

1 MS. CHO: And (indiscernible) --

2 MR. STANG: And I'll make --

3 THE COURT: And I signed --

4 MR. STANG: -- a reference --

5 THE COURT: -- that order today by the way. Oh, I  
6 added to the order as an aside that they have to keep a claims  
7 register for each debtor, and that they agree to abide by the  
8 guidelines of this court.

9 MR. STANG: But you wanted the guidelines attached.

10 THE COURT: Well, they weren't.

11 MR. STANG: Right.

12 THE COURT: But I just added it by text.

13 MR. STANG: Oh, okay.

14 THE COURT: So I've solved that problem. All right.

15 And then we'll have the hearing on that on the 17th.

16 Objections must be filed by the 16th at 3:00 p.m. Pacific

17 Daylight Time. I know that doesn't give you --

18 MR. STANG: Okay.

19 THE COURT: -- much time to respond. But at least,  
20 it gives you a little head start.

21 MR. STANG: Yeah. I think we'll be talking with the  
22 people who are most likely --

23 THE COURT: I think that's right.

24 MR. STANG: -- to have objections.

25 THE COURT: Now --

1 MR. STANG: Okay.

2 THE COURT: We need to go back over to these other  
3 motions.

4 MR. STANG: Yes.

5 THE COURT: Now, the good news is partly because my  
6 staff was ready to shoot me I'm prepared to go ahead and enter  
7 an order of joint administration as long as we do several  
8 things.

9 One -- and then we discussed this yesterday -- the notice  
10 of the 341 meeting will go out for each debtor and the proof of  
11 claims. The creditors will be directed -- in other words, the  
12 mailing matrix for each creditor, and the creditor is to file  
13 the claim in that --

14 MR. STANG: Right.

15 THE COURT: -- in the appropriate debtor's case.

16 MR. STANG: We're going to give you a master mailing  
17 list for each separate debtor.

18 THE COURT: Correct.

19 MR. STANG: Right. Got it.

20 THE COURT: And then it will be the same date and  
21 time. I mean, it will be the same date and time. It will be  
22 held together.

23 MR. STANG: Your Honor, I have to admit to being a  
24 little unaware of exactly how these dates get automatically  
25 generated, but is it clear that that, in fact, is what those

1 notices that are generated by BNC are going to say?

2 THE COURT: It's my understanding talking to our  
3 Clerk of Court that's what they're going to do, but I would ask  
4 -- I know Mr. Larson's been working with our staff very  
5 closely.

6 Make sure they -- Mr. Larson, if I could impose on you --  
7 and I'll certainly suggest it to them, but I'm likely to  
8 forget -- before they send it out to have me eyeball it, you  
9 eyeball it, so that you make sure it covers the things that you  
10 want covered in there.

11 MR. LARSON: Absolutely. Absolutely, your Honor.

12 THE COURT: Okay. And then they'll be doing that  
13 mailing, and I think they'll be able to do it Friday if you get  
14 those uploaded.

15 MR. DUBLIN: Your Honor, it's --

16 THE COURT: So I'm prepared --

17 MR. DUBLIN: It's Phil Dublin speaking, but I  
18 apologize for interrupting. It's --

19 THE COURT: That's all right.

20 MR. DUBLIN: It's 7:00 o'clock here in New York, and  
21 I am already late for my Seder. It is the first night of  
22 Passover. I was hoping to be excused.

23 I just wanted to note that we had provided and commented  
24 on a number of the other orders that Mr. Stang has uploaded and  
25 is going to present. They are all consensual from the

1 First Lien Steering Committee's perspective.

2 And to the extent that your Honor has any issues with the  
3 agreed-upon terms, I'm sure that we would be able work those  
4 out. But if I don't get to my Seder soon, I'm afraid that my  
5 wife will want to divorce me.

6 THE COURT: Okay. All right. So that's fine.  
7 You're excused, and so I gather, then, that the  
8 First Lien Committee has withdrawn its objections to all those  
9 other motions at least on an interim basis on the bank  
10 accounts, et cetera?

11 MR. DUBLIN: That's correct, your Honor. On an  
12 interim basis, we are consenting to the entry of those  
13 orders --

14 THE COURT: Okay.

15 MR. DUBLIN: -- as modified.

16 THE COURT: Okay. Fine.

17 Thank you.

18 MR. DUBLIN: Thank you, your Honor.

19 THE COURT: Yes. You're excused.

20 (Philip C. Dublin, Esq., was excused from the proceedings  
21 at 04:00:29 p.m.)

22 THE COURT: So you can --

23 (Colloquy not on the record.)

24 THE COURT: And the other thing in the motion for  
25 joint administration is that you, the professionals, all



1 professionals, that anticipate filing applications for fees  
2 have to to the best of their ability segregate their work  
3 vis-a-vis the debtors.

4 MR. STANG: Your Honor, may I --

5 THE COURT: So --

6 MR. STANG: Your Honor, may I comment --

7 THE COURT: Yeah.

8 MR. STANG: -- on that --

9 THE COURT: Yeah.

10 MR. STANG: -- because I just went through this --

11 THE COURT RECORDER: Your Honor --

12 MR. STANG: -- before Judge Jury in Riverside --

13 THE COURT RECORDER: -- (indiscernible) --

14 THE COURT: Wait, wait.

15 THE COURT RECORDER: -- (indiscernible).

16 MR. STANG: -- on a case --

17 THE COURT: Wait. Wait.

18 MR. STANG: -- that --

19 THE COURT: Please, hold on. Wait.

20 THE COURT RECORDER: Off --

21 MR. STANG: Oh.

22 THE COURT RECORDER: Off record.

23 MR. STANG: Oh, I --

24 (Off the record at 04:00:58 p.m.)

25 (On the record at 04:01:07 p.m.)

1 THE COURT RECORDER: Okay. We're back on,  
2 your Honor.

3 THE COURT: All right. We're back on.  
4 Sorry.

5 MR. STANG: Okay. Judge Jury and I just went through  
6 this in a case called Empire Land out in Riverside, and what we  
7 had done in that case was we created what in this case I guess  
8 I would call a Rhodes' general account, and we would bill to  
9 that account matters that we thought were of common interest,  
10 for example --

11 THE COURT: Okay.

12 MR. STANG: -- this hearing. If there was an item  
13 that was specifically related to Pinnacle, I would have a  
14 separate Pinnacle-matter number.

15 THE COURT: Yes.

16 MR. STANG: And I would bill just to that.

17 THE COURT: That's fine.

18 MR. STANG: And then at the end of the day, you know,  
19 maybe if someone says, well, we have to allocate it between the  
20 bankruptcy estates we'll figure out a way of doing that, but  
21 that's how I would -- you know, I'm not saying that should  
22 necessarily be in the order.

23 But I'm going to -- what I'll write down is that  
24 professionals doing fee apps have to record their time in a  
25 manner that enables it to be allocated to specific estates.

1 THE COURT: Right. And I think Mr. Landis has some  
2 magic language he likes to use, so --

3 MR. STANG: Oh, okay. Well, I would welcome that  
4 from him, then.

5 THE COURT: So yeah.

6 MR. LANDIS: We --

7 THE COURT: And because the whole point is now I  
8 don't want to surprise you later. You know, in other words --

9 MR. STANG: No, no, no. And --

10 THE COURT: So --

11 MR. STANG: -- in this case like --

12 THE COURT: And I think that --

13 MR. STANG: In a case like -- I'm sorry.

14 THE COURT: No. Go ahead.

15 MR. STANG: I was going to say in a case like this  
16 even a couple of days can become a horrific task of trying to  
17 sort it back out later.

18 THE COURT: Yeah.

19 MR. STANG: So earlier is definitely best.

20 THE COURT: Okay. And the lead case should be not  
21 Heritage Land, but The Rhodes Companies, LLC. Also, please  
22 amend the petition in The Rhodes Companies to put a/k/a  
23 Rhodes Companies, LLC, because I've told you --

24 MR. STANG: Yes.

25 THE COURT: As I've told you -- it's not your

1 fault -- our system didn't pick it up because it was not "The".

2 MR. STANG: We have discussed that. Ms. Cho and I  
3 have discussed that, and we're in the process of preparing the  
4 amended petition.

5 THE COURT: And then when things settle down  
6 Mr. Larson's office can work with our staff on how we get  
7 everything that was filed in Heritage over to the Rhodes cases  
8 whether it's by a docket entry or whatever, so that people can  
9 follow.

10 But from now on -- after you get this order, from now on,  
11 file it -- and that's the lead case. The lead case will be --  
12 I don't have that number, but you know which one that is.

13 MR. STANG: Right. So, your Honor, as I understand  
14 it, what we should do is file -- you know, apparently, we can't  
15 just file an order in a case. We have to tie it to a motion,  
16 and so we --

17 THE COURT: Right.

18 MR. STANG: -- would file the joint admin motion in  
19 each of the 32 cases. We would file the joint admin order in  
20 each of the 32 cases.

21 And that joint admin order will, in effect, serve as a  
22 notice to anyone looking saying look at case No. 1 for all  
23 subsequent pleadings.

24 THE COURT: I think -- yes. That's right.

25 MR. STANG: Yeah. Okay.

1 THE COURT: And, again, the clerk has I think a form  
2 order that they work with you on that. The form order you  
3 provided was fine but for the fact that I want it to be in --  
4 so that people know where to find the case.

5 MR. STANG: Got it. Okay.

6 THE COURT: And, well, it's just the problem of how  
7 do we now transfer it over. It can be done. It's just a  
8 mechanical kind of thing.

9 And, you know, it may well just be for a docket entry we  
10 do it by saying for prior to this date check docket number such  
11 and such. Check the docket in Heritage Company for matters  
12 after that. It's after that, so it --

13 MR. STANG: Right.

14 THE COURT: That's just a procedural issue. All  
15 right.

16 MR. LARSON: And I think we have --

17 MR. STANG: Okay.

18 MR. LARSON: -- that scheduled to fix the first thing  
19 next week, your Honor.

20 THE COURT: Okay. Great. Then the next thing we had  
21 was -- I'm sorry. I've lost the calendar. You have now a form  
22 order on your prepetition wages, et cetera?

23 MR. STANG: Yes. That has been consented to I  
24 believe by all parties, including the U.S. Trustee's Office.

25 THE COURT: All right. I'm prepared to approve that,

1 and we did this. The extension of time is granted 'til -- did  
2 I say 15 days after or what did I say?

3 MR. STANG: You said 15 days yesterday.

4 MR. LANDIS: Yes.

5 THE COURT: Okay.

6 MR. LANDIS: And the order billed --

7 MR. STANG: Right.

8 MR. LANDIS: -- (indiscernible) April 30th, Judge,  
9 that's a full week in advance of the 341 meeting. We have no  
10 further opposition based on that date.

11 THE COURT: Okay.

12 MR. DeAMICIS: Right. And, your Honor, Don DeAmicis,  
13 the second-lien lenders. Just so the record reflects, we've  
14 been in very late. We haven't consented to anything at this  
15 point.

16 THE COURT: But you have no opposition to the  
17 motion --

18 MR. DeAMICIS: We --

19 THE COURT: -- I --

20 MR. DeAMICIS: We're not registering an objection.

21 THE COURT: Okay. Thank you.

22 No. 4, debtors to sell homes free and clear, the  
23 procedures.

24 MR. STANG: Everyone signed off, including the  
25 U.S. Trustee, your Honor.

1 THE COURT: All right. So that's granted, and  
2 there's no objection filed by the second, so that's granted.

3 No. 5 was the cash collateral which we've dealt with.

4 No. 6 is the prepetition obligations, and any objection to  
5 a form order on that one?

6 MR. STANG: I think we were awaiting the  
7 U.S. Trustee's response, your Honor.

8 THE COURT: Okay.

9 MR. LANDIS: That's not accurate, Judge. We've  
10 already agreed --

11 MR. STANG: Oh.

12 MR. LANDIS: -- to that.

13 THE COURT: You've agreed to that?

14 MR. LANDIS: Yeah.

15 THE COURT: All right. So that will --

16 MR. STANG: Sorry.

17 MR. LANDIS: That --

18 THE COURT: That will be granted.

19 MR. LANDIS: That's okay.

20 THE COURT: That's all right.

21 MR. STANG: Sorry, Mr. Landis.

22 THE COURT: Things move.

23 MR. LANDIS: Trying to help.

24 THE COURT: And then No. 7, and I had a concern about  
25 the administrative priority for postpetition intercompany

1 claims. I assume you're deferring that issue and have reached  
2 an agreement as to the rest or do you have an agreement?

3 MR. STANG: I think we've put it off 'til the 17th,  
4 your Honor.

5 THE COURT: Okay. Good.

6 MR. LANDIS: That's accurate, Judge.

7 MR. STANG: Yeah.

8 MR. LANDIS: We reserved that one, specifically.

9 THE COURT: Okay. So the whole motion is reserved  
10 for the 17th or just that part 4?

11 MR. STANG: We're granting the --

12 THE COURT: And then --

13 MR. STANG: We are seeking approval only on an  
14 interim basis. And as to the administrative priority, that's  
15 not included in the interim approval.

16 THE COURT: Okay. So interim, we're -- are we  
17 approving, Mr. -- I'm sorry.

18 Mr. Landis, do you have any objection to the existing bank  
19 accounts, the existing cash management, on an interim basis?

20 MR. LANDIS: Not on an interim basis, Judge. What it  
21 does is it pushes the issues back to the 17th to allow us to  
22 work them out.

23 THE COURT: Okay.

24 MR. LANDIS: I think that's good. And in that order,  
25 too, because it also -- there are two orders that talk about



1 intercompany claims being accorded, you know, administrative  
2 priority. All I did in the proposed order was reserve that  
3 issue back to the 17th --

4 THE COURT: Okay.

5 MR. LANDIS: -- your Honor.

6 THE COURT: Good. All right. So that's continued to  
7 the 17th, so the only motions we have continued to the 17th are  
8 the motion -- it will be an amended motion for approval. Well,  
9 really, it's a new motion.

10 It's a motion -- how do you want to do that, the motion to  
11 approve cash collateral, the agreement? I guess it's really a  
12 new motion, isn't it?

13 MR. STANG: I guess, well, we --

14 THE COURT: Why don't you call it an amended motion  
15 and indicate it's with consent now. That way that gets us in  
16 our time frame, and --

17 MR. STANG: Well, your Honor, it only goes through  
18 the 17th, and so I don't know what their position's going to be  
19 when I talk to them tomorrow about getting past the 17th.

20 THE COURT: Okay. So we need to continue your motion  
21 which is --

22 MR. STANG: Yes.

23 THE COURT: -- Docket No. 5. You also will be filing  
24 a motion for approval of agreement for I guess for --

25 MR. STANG: Yes.

1 THE COURT: -- cash collateral to be heard on the  
2 17th.

3 MR. NAGUIAT: Excuse me --

4 THE COURT: It may make --

5 MR. NAGUIAT: -- your Honor. It's Ramon Naguiat on  
6 behalf of Credit Suisse. Is this motion going to deal with the  
7 interim agreement? It's just to get approval of that? Is that  
8 what's contemplated --

9 THE COURT: Oh, that's right --

10 MR. NAGUIAT: -- because --

11 THE COURT: -- because you're only interim, aren't  
12 you?

13 MR. NAGUIAT: Yeah. Right.

14 THE COURT: We don't have --

15 MR. NAGUIAT: Right now, we're only on an interim, so  
16 there is no real motion to approve this agreement to the extent  
17 your Honor is -- I think your Honor's approving that today.

18 So it's really I think a motion for, you know, further  
19 interim use of cash collateral past the 17th and then final use  
20 of cash collateral, and maybe I'm misunderstanding or I missed  
21 something, but --

22 MR. STANG: Yeah. I think he may be right,  
23 your Honor. We are looking for approval of use of cash  
24 collateral after the 17th, and we don't have any agreement on  
25 that at the moment.

1 THE COURT: That's right. My original concern was  
2 all this language that granted all of that to the creditors --

3 MR. STANG: Yeah. Right.

4 THE COURT: -- on an interim basis, but we have  
5 excised out most of the offending language. Well, I still  
6 think the creditors have to have the right to object, so they  
7 could say, I'm sorry --

8 MR. STANG: Okay.

9 THE COURT: -- you shouldn't have approved it on an  
10 interim basis, so I think we are having a hearing on that  
11 interim hearing on the 17th. I mean, you run the risk that a  
12 creditor says you should never have done it, but, hey, that's  
13 due process.

14 MR. STANG: Right. All right. So we'll have two  
15 things related to cash collateral. One will be our noticed  
16 motion for approval of use of cash collateral post-17th and  
17 then a motion for approval of the agreement that's being  
18 entered today on an interim basis.

19 THE COURT: Correct. And that will make it --

20 MR. STANG: Okay.

21 THE COURT: -- much easier, too, in case you agree to  
22 something final just to continue that out.

23 MR. STANG: Right. Right.

24 THE COURT: And then --

25 MR. STANG: Okay.

1 THE COURT: -- we also have -- Docket No. 7 will be  
2 continued, and then I will sign the order shortening time for a  
3 motion to appoint a trustee for the 17th.

4 MR. STANG: Your Honor, before we go past the trustee  
5 scheduling, Mr. Kornfeld who's been on the line asked me if we  
6 could get some deadlines for briefing.

7 Or, Mr. Kornfeld, maybe you should just address it  
8 directly.

9 MR. KORNFELD: Your Honor, the question really is  
10 when will the Court want our response to be due for that  
11 briefing.

12 And just for reference, we envision the depositions will  
13 be taking place, probably, on the 14th and 15th at a minimum,  
14 perhaps, even on the 13th.

15 THE COURT: Quite frank --

16 MR. KORNFELD: So if --

17 THE COURT: I'm sorry.

18 MR. KORNFELD: So --

19 THE COURT: What --

20 MR. KORNFELD: So if our response date could be on  
21 the 16th at 3:00 p.m. like the cash-collateral response, then  
22 that would be helpful. And if not, we'll do, of course,  
23 whatever the Court wants.

24 THE COURT: Well, quite frankly -- and you'll be glad  
25 to hear this -- you know, I think briefing is of little use in

1 a case like this. We all know what the statute says. It's the  
2 evidence that makes the difference.

3 I think for just the sake of preserving the record, you  
4 file an opposition, and then we'll have the evidence, and then  
5 if there is, you know, legal issues involved I could have  
6 postbriefing, but, you know, we know what the standards are.

7 I mean, the standard's in the code, and I know there's  
8 cases that the Court acts as appointed trustee because of this,  
9 and Court Y has or hasn't. That's all very well and good.

10 But that's just some Court that said that, so it's just  
11 whatever the -- you know, I have to apply the facts to the law,  
12 and the law is spelled out pretty clear in 1112.

13 MR. KORNFELD: Okay. So would the Court want us to  
14 file an opposition that says for, you know, the reasons that  
15 will be presented at the hearing we hereby oppose or does the  
16 Court want more --

17 THE COURT: I'm --

18 MR. KORNFELD: -- detailed briefing?

19 THE COURT: I'm satisfied with that.

20 MR. KORNFELD: Okay.

21 THE COURT: I wouldn't --

22 MR. KORNFELD: We --

23 THE COURT: I wouldn't object to that.

24 MR. KORNFELD: Your Honor, we can do that.

25 THE COURT: And I --

1 MR. STANG: Oh.

2 THE COURT: And remind me when I yell at you later  
3 for saying what kind of a brief is this that I said so.

4 MR. KORNFELD: I will do so gently.

5 THE COURT: Okay. Thank you.

6 I assume that the movant doesn't disagree with that  
7 analysis? I mean, you know, what kind of cases do you need to  
8 see from them?

9 MR. THOMAS: Well, I think Phil -- I'm sorry. I'm  
10 sorry, your Honor.

11 MR. STANG: Your Honor --

12 MR. THOMAS: Tim --

13 MR. STANG: -- I believe Mr. Dublin dropped off.

14 MR. THOMAS: Right.

15 THE COURT: Okay.

16 MR. THOMAS: Tim Thomas, the local counsel. I'm sure  
17 that that's fine, your Honor.

18 THE COURT: Okay. And that, of course, means you  
19 don't need to do a reply brief, either. Now, to make it go as  
20 fast as possible, declarations are fine, depositions are fine,  
21 but keep in mind if you've -- you've got to, of course, make  
22 your witnesses available for cross-examination if you use  
23 declarations. Keep in mind if you use a deposition that I've  
24 got to have time to read them.

25 I don't expect you to read the depositions in the record

1 here. That takes too long, but it would be helpful I guess if  
2 you have -- if you have specific testimony, you know, lay it  
3 all out.

4 So with the extent you talk about briefs, if you're later  
5 talking about summations of evidence, that's appropriate, you  
6 know. I mean, have that available.

7 If you have summations of the evidence that's I can look  
8 at after the conclusion of the evidence, that will be very  
9 helpful.

10 MR. KORNFELD: Something in the nature of findings of  
11 fact.

12 THE COURT: Sure. Yeah. The point being the --  
13 yeah. You know, who said what and what they said.

14 MR. KORNFELD: Okay. Then we can definitely do that,  
15 your Honor, and that would be at a posttrial schedule I guess  
16 for all parties that you'll tell us when you want that.

17 THE COURT: Right. If I can't make a decision that  
18 day, then that's what we'll have to do, and I think you're all  
19 aware I am unavailable the next week, so I could not bring you  
20 back until the 27th or 28th.

21 Do you want to reserve a time now just so that everybody's  
22 got their schedule clear and my calendar doesn't filled?

23 MR. KORNFELD: Your Honor, I think that would  
24 definitely be helpful.

25 THE COURT: All right. Let's reserve the 28th for

1       you, then, or would you rather have May 1st?

2               MR. KORNFELD: From our standpoint, any of those  
3       dates work, your Honor.

4               THE COURT: Mr. Stang, any preference?

5               MR. STANG: No, your Honor.

6               THE COURT: Okay. Well, let's say --

7               MR. THOMAS: And, your Honor, from the  
8       Lien Steering Committee, I don't know what Mr. Dublin's  
9       schedule is, but I think within that short period of time any  
10      of those dates is fine.

11              THE COURT: Okay. Well, let's say May 1st. The  
12      point is that would then give you two full weeks if we needed  
13      it to, you know, get a transcript, pull the evidence together,  
14      et cetera.

15              MR. KORNFELD: Okay.

16              THE COURT: And if you change your mind, just let me  
17      know the -- just let me know.

18              MR. THOMAS: Thank you, your Honor. I'll --

19              THE COURT: Well, I'll tell you what we'll do. Right  
20      now, we'll reserve both days for you. The worst-case basis is  
21      it goes off, and I don't have anything to do. That's the worst  
22      thing that could happen to me.

23              THE CLERK: Your Honor, are we having it at 9:30?

24              THE COURT: Yeah. What's a good time for counsel  
25      because you all travel, 9:30, 10:00, earlier, later?



1 MR. STANG: 10:00 o'clock would be a good start time  
2 for us, your Honor.

3 THE COURT: Okay. All right.

4 MR. KORNFELD: Yes.

5 THE COURT: 10:00 o'clock on the 28th and  
6 10:00 o'clock on the 1st we'll reserve for you.

7 MR. THOMAS: And should we contact the Court if  
8 there's going to be a scheduling issue with either of those  
9 or --

10 THE COURT: Sure.

11 MR. THOMAS: All right. Thank you, your Honor.

12 MR. KORNFELD: And, your Honor, the start time -- and  
13 the Court may have said this, and I may have missed it -- on  
14 the 17th for that day's hearing, is that 10:00 o'clock, also?

15 THE COURT: Right now, we have them at 9:30. It was  
16 the utility motion was noticed out at 9:30. If you want to  
17 make the other motions 10:00 o'clock, that's fine. Just notice  
18 them out for that time.

19 MR. KORNFELD: Okay.

20 THE COURT: So we'll continue those other motions  
21 'til 10:00, then.

22 THE CLERK: Okay.

23 THE COURT: The utility motion will be on at 9:30.  
24 Just so you know, we've set May 15th as an omnibus day for this  
25 case. We've had so many other things to do.

1           How should we go about that form-scheduling order? I  
2           think I have one.

3           Shall I just give it to Mr. Larson and have you upload it  
4           in this case.

5           MR. LARSON: That would be great.

6           THE COURT: I think we talked about it. I'm just  
7           going to use the same format we used in Lake At Las Vegas  
8           Joint Ventures.

9           You all can work with the clerk in getting additional  
10          omnibus hearing days, and let's get that entered just so people  
11          know to do the courtesy copies, Court Call procedures,  
12          et cetera, so we'll use that same form order.

13          I have no problem if the parties think of additional  
14          things that should be in a case-management order to include  
15          them. All right.

16          Thank you very much.

17          MR. STANG: Your Honor --

18          THE COURT: Uh-huh.

19          MR. STANG: -- before you go off?

20          THE COURT: Sure.

21          MR. STANG: One never wants to press one's luck I  
22          guess. Do you still want the chart that you talked to us about  
23          yesterday?

24          THE COURT: Oh, I -- yes, I do.

25          MR. STANG: Okay. All right.

1 THE COURT: I'll tell you why. Because  
2 notwithstanding the fact in the joint venture, it's going to  
3 help all of us understand all the relationships of all the  
4 parties in this case, so that I'm not the only one that's in  
5 the dark.

6 MR. STANG: Oh, I'd like to think you weren't the  
7 only one.

8 THE COURT: So --

9 MR. STANG: We're working on it --

10 THE COURT: I can --

11 MR. STANG: -- your Honor.

12 THE COURT: I understand with your time pressures  
13 that it may be later, rather than sooner. Certainly, it would  
14 helpful to have it for the trustee hearing because that, you  
15 know, to the extent you could stipulate facts. That will be a  
16 good way --

17 MR. STANG: Right.

18 THE COURT: -- to stipulate your facts on the chart  
19 of what all these entities are.

20 MR. STANG: We're working through it.

21 THE COURT: Okay.

22 MR. STANG: Your Honor, I'd just like to say one  
23 other thing. You've been very patient with all of us,  
24 including the timing of getting you the orders today.

25 You asked me yesterday, you know, when did I start working

1 on this. Mr. Dublin and I and other people started the first  
2 thing our respective mornings.

3 And I'm sure it was somewhat frustrating for you to be  
4 waiting for us, but I appreciate the way you've approached us  
5 today in today's hearing.

6 THE COURT: Okay. Well, thank you very much.

7 MR. STANG: All right.

8 THE COURT: All right.

9 MR. STANG: All right.

10 THE COURT: Thank you.

11 MR. STANG: Thank you.

12 THE COURT: Um-h'm.

13 MR. STANG: Bye.

14 THE CLERK: All rise.

15 (Court concluded at 04:18:15 p.m.)  
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24  
25

1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.  
4  
5

6 /s/ Lisa L. Cline

04/13/09

7 Lisa L. Cline, Transcriptionist

Date